

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

HERBERT ROGERS, SR.,
Public Employee/Appellant,

and

STATE OF IOWA (DEPARTMENT OF
PERSONNEL),
Public Employer/Appellee.

CASE NO. 92-MA-11

RECEIVED
PUBLIC EMPLOYMENT
RELATIONS BOARD
OCT 19 1992

RULING ON MOTION TO DISMISS

Diane Tvrdik, Administrative Law Judge. In this case Public Employee/Appellant, Herbert Rogers, Sr. (hereinafter Rogers or Appellant) appeals from the third step grievance procedure. Rogers filed the State Employee Grievance and Disciplinary Action Appeal Form pursuant to §19A.14(1)¹ with the Public Employment Relations Board (PERB or Board) on October 14, 1991. The basis for the appeal was a non-contract grievance form², in which Rogers alleged that the State of Iowa, Iowa Department of Personnel (State or IDOP) violated §§8.38 and 19A Iowa Code and state personnel procedures when he was presented with a computer printout of various personal phone calls and informed that he would be required to reimburse IDOP for those calls.³ No specific provision of §19A

¹All statutory citations, unless otherwise indicated, are to the Iowa Code (1991).

²Rogers has several outstanding grievances filed with IDOP. IDOP has designated the instant appeal as NC-225.

³Pursuant to the non-contract grievance form which was submitted in conjunction with the appeal form, Rogers alleges that he was presented with computer printouts of various personal phone calls which had been placed between 1989 through 1991. He further alleges that the requirement by IDOP that he reimburse the department for those personal telephone calls "treated him differently from other employees similarly situated".

nor any IDOP rule violation was alleged either in the appeal form itself or at hearing.

On December 11, 1991, IDOP filed a Motion to Dismiss. IDOP's motion is based upon two separate grounds: (1) PERB is without subject matter jurisdiction since jurisdiction lies with Iowa Civil Rights Commission (ICRC or Commission), and (2) on May 21, 1991, Rogers, Tom Donahue and Linda Hanson (both management personnel at IDOP), agreed that Rogers "would reimburse IDOP for making personal phone calls identified by [Rogers] and accepted by [IDOP]", thereby precluding Rogers from any further litigation on the issue of the appropriateness of his reimbursement to IDOP.

A hearing on IDOP's motion was held before me on March 19, 1992 at PERB's office in Des Moines, Iowa. The Appellant was represented by William S. Morris and the State was represented by Kristin Johnson. Morris moved to amend the State Employee Grievance and Disciplinary Action Appeal Form to include a violation of an unspecified IDOP rule. This motion was resisted by the State and was denied by the undersigned. Both parties had an opportunity to present legal arguments to support their respective positions on the Motion to Dismiss. Based upon the entire record, I make the following Findings of Facts and Conclusions of Law.

FINDINGS OF FACTS

The facts relevant to the ruling on the State's motion are as follows:

On May 13, 1991, Rogers was presented with computer printouts of various personal long-distance phone calls and informed that

reimbursement to IDOP was required. On May 23, 1991, Rogers filed a non-contract grievance form with IDOP, which asserts that he was "being treated differently than other employees similarly situated". Rogers failed to report for a first-step grievance meeting and pursuant to a request by Rogers, this grievance was referred for processing at the third-step grievance level. A third-step grievance decision was issued on September 13, 1991, wherein the grievance was denied. Rogers filed the instant timely appeal to PERB on October 14, 1991. In that appeal the remedy sought by Rogers was the: (1) repayment of funds paid by him and (2) expungement of the incident from the Appellant's personnel file. Morris advised that there is concurrent litigation on this issue at the Commission.

CONCLUSIONS OF LAW

The issue before me is whether PERB has the jurisdiction to hear the Appellant's grievance filed under §19A.14(1) which fails to allege a specific violation of either §19A or IDOP Rules.

Subject matter jurisdiction refers to the right of an agency to hear and determine the class of cases to which a particular case belongs.⁴ PERB's jurisdiction over a state employee grievance appeal arises from Chapters 19A and 20 of the Iowa Code. Section 20.1(4) provides that PERB's powers and duties include: "adjudicating and serving as arbitrators regarding state merit

⁴Soudabeh Janssen's and Iowa Department of Cultural Affairs, 90-MA-04 (Ruling on Motion to Dismiss, March 30, 1991).

system grievances" PERB's jurisdiction also flows in part from §19A.14(1). This section provides in relevant part:

An employee, . . . may, . . . file a grievance at the third step with the director. The director shall respond within thirty calendar days following the receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board.

PERB Rules⁵ confer jurisdiction upon PERB when an employee has filed a grievance which alleges either a violation of Iowa Code §19A or the rules of IDOP. In the Grievance Appeal Form filed on behalf of Rogers, there is no alleged violation of any IDOP Rule, nor was there any allegation of an IDOP Rule violation made at hearing. A review of the pleadings further confirms that no allegation has been made of a violation of a provision of §19A.

Under the §19A(1) standard, decisions rendered by PERB shall be based upon a standard of substantial compliance with Chapter 19A and the rules of the Department of Personnel.⁶ The burden is upon the employee filing the appeal to initially allege that IDOP failed

⁵Iowa Admin. Code 621-r. 11.2(2) *Grievances*. An employee . . . may appeal with the board if the grievance alleged either a violation of Iowa Code Chapter 19A or the rules of the department of personnel . . .

* * *

621-r. 11.3 **Content of the appeal.**

11.3(1) The appeal shall contain the following:

10. A statement of the Iowa Code Chapter 19A provision and department of personnel rule(s) which has allegedly been violated. (Note: This statement is required only for appeals of grievance decisions, not appeals of disciplinary actions.)

⁶Iowa Code §19A.14(1)(1991).

to meet that §19A standard. In this case, Rogers has not made a *prima facie* allegation that a violation occurred.⁷

Therefore, this appeal by Rogers is dismissed for failure to state a claim upon which relief may be granted.⁸

DATED at Des Moines, Iowa this 10th day of April, 1992.



Diane Tvrdik,
Administrative Law Judge

cc: William S. Morris
Kristin H. Johnson

⁷If there is no genuine issue of material fact, summary judgment may be appropriate. Vaughn v. Aq Processing, Inc., 459 N.W.2d 627, 639 (Iowa 1990).

⁸I do not address IDOP's argument of the exclusive jurisdiction of ICRC since I have dismissed this appeal for failure to state a claim upon which relief may be granted.